

BEFORE THE BOARD OF DENTAL EXAMINERS  
OF THE STATE OF IOWA

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IN THE MATTER OF	)	
	)	
MAHNAZ BADIHIAN, D.D.S.	)	FINDINGS OF FACT,
350 Beaver Creek Center	)	CONCLUSIONS OF LAW,
North Liberty, Iowa 52317	)	DECISION AND ORDER
	)	
Iowa Dental License #7569	)	
	)	
Respondent	)	

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On October 26, 2001, the Iowa Board of Dental Examiners (Board) filed a Statement of Charges against Mahnaz Badihian, D.D.S. (Respondent) charging her with three counts:

Count I: Violating Iowa Code section 153.34(9)(2001) and 650 Iowa Administrative Code section 30.4(16) by failing to maintain a reasonably satisfactory standard of competency in the practice of dentistry.

Count II: Violating Iowa Code section 153.34(4)(2001) by willfully or repeatedly violating a Board rule when she failed to protect the health of patients by assigning unlicensed auxiliary staff duties which cannot be legally delegated to them, in violation of 650 IAC 27.5.

Count III: Violating Iowa Code section 153.34(4)(2001) by willfully or repeatedly violating a Board rule by allowing dental assistants to engage in dental radiography without meeting the requirements of 650 IAC 22.3 and 22.4.

A Notice of Hearing was issued on October 26, 2001, which scheduled a hearing for January 16, 2002. The Respondent requested a continuance of the hearing, which was granted. The Respondent subsequently filed two additional requests for continuance, which were resisted by the state and denied by the Board. An Application for Stay was denied by the Polk County District Court.

Pursuant to the Iowa Board of Dental Examiners' Order for Continuance dated January 16, 2002, this matter came on for hearing before the Board on April 17, 2002, in the conference room at the Board's office at 400 SW 8th Street, Ste. D, Des

Moines, Iowa. The following members of the Board were present for the hearing: Le Roy Strohman, D.D.S., Chairperson; George North, D.D.S.; Deena R. Kuempel, D.D.S.; Alan D. Hathaway, D.D.S.; Debra Yossi, R.D.H.; Eileen Cacioppo, R.D.H., and Elizabeth Brennan, public member. The Respondent appeared and was represented by Michael Sellers. The state of Iowa was represented by Theresa O'Connell Weeg, Assistant Attorney General. The hearing was closed to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1) and 650 IAC 51.20(13). The testimony was tape recorded and was recorded by a certified court reporter.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2001), to deliberate their decision. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board with the conduct of the hearing and was directed to prepare this order of the Board, in accordance with their deliberations.

#### THE RECORD

The record includes the Statement of Charges; Notice of Hearing; Order for Continuance; subsequent Motions for Continuance; Resistances to Motions for Continuance; Board Rulings denying Motions for Continuance; the testimony of the witnesses, and State Exhibits 1-16 and Respondent Exhibits A-F, which were admitted by stipulation of the parties.

#### FINDINGS OF FACT

1. On July 1, 1992, the Respondent was issued license number 7569 by the Board to engage in the practice of dentistry, subject to the laws of the state of Iowa and the rules of the Board. License number 7569 is current and on active status until June 30, 2002. (State Exhibit 1)

2. The Respondent is a general dentist with offices in Muscatine and North Liberty, Iowa. The Respondent spends approximately one and one-half days a week in Muscatine, and the remainder of her time in North Liberty. (Testimony of Respondent)

#### *The Complaint*

3. On February 2, 2001, the Board received a patient complaint regarding the Respondent. One of the patient's (hereinafter,

MB) complaints was that the Respondent improperly allowed a dental assistant to remove a working file from her tooth canal during a root canal procedure. The working file broke off and a piece was left in the canal, but the Respondent was not aware of this and did not inform MB. MB learned about the broken working file from a subsequent treating dentist. MB also had billing complaints.

The complaint was referred to the Board's investigator, Phil McCollum, who subpoenaed MB's records from the Respondent and two subsequent treating dentists. The investigator also subpoenaed ten additional randomly selected patient records from the Respondent for review by a Board consultant. Finally, Mr. McCollum visited the Respondent's dental offices and interviewed the Respondent and her dental assistants. (Testimony of Phil McCollum; State Exhibits 3-17)

#### Removal of the Working File

4. The Respondent began treating MB on October 5, 2000. In her health history, MB noted that she was experiencing pain in her teeth. At her initial appointment at the Respondent's North Liberty office, the patient's teeth were cleaned, and five or six cavities were identified. At two subsequent appointments on October 19 and November 2, 2000, six cavities were filled. The cavity on tooth #5 was deep, and MB was told to watch for pain.

The Respondent obtained additional training in endodontic procedures because her patients in Muscatine frequently were financially unable or unwilling to travel to another community for treatment by a specialist. On November 4, 2000, MB called complaining about pain, and the Respondent suspected that she would need a root canal. The Respondent was unable to get MB into a specialist's office on short notice, so she saw her as an emergency patient and went ahead and performed a pulpectomy on tooth #5. SB was the dental assistant for the procedure. On November 8, 2000, MB called the Respondent at her Muscatine office complaining about pain. The Respondent called in a prescription for an antibiotic and Motrin and told MB to come to the North Liberty office on November 9<sup>th</sup>. (Testimony of Respondent; Phil McCollum; State Exhibits 4)

5. On November 9, 2000, MB was referred to an endodontist, Dr. David Hansen, D.D.S., M.S., to finish the root canal. Dr. Hansen took a radiograph of the tooth, which revealed a broken working file in the patient's lingual canal. He told MB, who had been unaware of the broken file, and finished the procedure.

MB was very upset that she had not been told about the broken working file. Dr. Hansen called the Respondent, and she told him that she was not aware that the file had broken. MB later spoke to the Respondent's dental assistant, SB. According to the patient dental assistant SB admitted to her that she may have removed the working file after the radiograph was taken. (Testimony of Phil McCollum; State Exhibits 5, 6)

6. The patient records were reviewed by Board Consultant JG. With respect to the broken working file, the Board consultant concluded that it was possible for a working file to separate without the dentist realizing it. While it is not substandard treatment to have a working file fail, the dentist should inform the patient if the dentist knows that the working file failed. The Board consultant's biggest concern was the patient's allegation that the dental assistant, and not the Respondent, removed the working file. He further noted that this would explain why the Respondent did not know about the file separation. The Board consultant concluded that placing endodontic files into a root canal, working the files in the root canal, removing the files, and irrigating the canal are all duties of the treating dentist that should not be delegated to a dental assistant. The Board agrees with his conclusion. (Testimony of Phil McCollum; State Exhibits 18, 19)

7. While it seems clear that dental assistant SB removed working files on at least two occasions, the Board was unable to determine, by a preponderance of the evidence, that dental assistant SB removed the working file for patient MB, as alleged in the Statement of Charges.

a. On June 7, 2001, Mr. McCollum interviewed SB. When asked if she ever removes the working file, she replied "yes." She did not know if she had removed the working file for MB, but stated that she always looked at the file and if a piece was missing would tell the Respondent right away. SB left the Respondent's employment to attend school for dental hygiene shortly after her interview by Mr. McCollum. (Testimony of Phil McCollum; Respondent; State Exhibit 7)

b. The Respondent recalled taking a piece of gauze and removing the working file from the canal of MB. She did not recall if she looked at the file; but she would have told the patient if she had known it was broken. The Respondent denies that she ever assigned SB the task of removing working files or permitted her to do it. On a

couple of occasions, the Respondent discovered that the working file had been removed following a radiograph. She asked SB about it, and SB admitted removing the file because the patient was very uncomfortable. The Respondent told SB she should not remove working files. After MB's complaint, the Respondent told SB that she must not ever again remove a working file. (Testimony of Respondent)

Even dental assistant SB could not recall specifically if she had removed the working file for MB. In light of the Respondent's testimony that she remembered removing the file, the Board did not believe that a contrary conclusion was supported by the preponderance of the evidence. However, it was clearly the Respondent's responsibility to ensure that her dental assistant understood that she could not remove working files.

#### Use of a Rubber Dam During Endodontic Procedures

8. Board dental consultant JG also reviewed the patient records and radiographs for several endodontic patients of the Respondent. In three cases, the dental consultant found that the working length radiograph showed that no rubber dam was being used during the endodontic procedure. The standard of care requires the use of a rubber dam during endodontic treatment.

At the hearing, the Respondent showed the Board the types of rubber dams that she normally uses during endodontic procedures. The rubber dams used and preferred by the Respondent isolate the tooth but do not have metal frames. The Board agrees that the rubber dams used by the Respondent would not be visible in the radiographs. The preponderance of the evidence did not establish that the Respondent does not use rubber dams during endodontic procedures. However, the Board notes that the Respondent might have avoided this charge entirely if she had properly documented her use of a rubber dam in the patient records. (Testimony of Phil McCollum; Respondent; State Exhibits 8-18)

#### Failure To Make Entry In Clinical Record

9. In his report, the Board dental consultant noted that patient GH had an endodontic procedure billed on June 1, 2001, but he was unable to review the procedure because there was no written record or radiographs. The patient record for GH includes a treatment plan, dated July 3, 2000, which included a

planned root canal on tooth #19, a billing for \$525 on June 1, 2001 for a root canal on tooth #19, and an entry in the chronological record dated June 5, 2001, indicating that a radiograph for #19 was sent to Delta Dental. The chronological patient record maintained by the Respondent contained no entry for the root canal treatment on June 1, 2001. (State Exhibits 15, 18)

Dental Radiography by Non-Certified Dental Assistants

10. The Respondent has employed at least three dental assistants who have been assigned by her to take dental radiographs before they were qualified in dental radiography pursuant to Board rules. See 650 IAC chapter 22. The Respondent had previously employed a dental assistant who was qualified to take dental radiographs. That employee was no longer employed by the Respondent at the time of the Board's investigation, but her expired radiography certificate was still hanging on the wall of the Respondent's North Liberty dental office. On June 7, 2001, the Board's investigator told the Respondent that all of her dental assistants must cease and desist taking dental radiographs until they were certified or placed on student status. (Testimony of Phil McCollum; Respondent; State Exhibits 4, 20)

a. The Respondent hired ET as a dental assistant in her Muscatine office on July 12, 2000. While she was employed by the Respondent, ET was assigned to take dental radiographs, even though she had not satisfied Board requirements for qualification in dental radiography in Iowa. ET was finally placed on student status in June 2001, and her application for qualification in dental radiography was approved on January 15, 2002. (Testimony of Phil McCollum; Respondent; State Exhibits 4; 20)

b. The Respondent hired SB as a dental assistant in her North Liberty office in July 2000. While she was employed by the Respondent, SB was assigned to take dental radiographs, even though she had not satisfied Board requirements for qualification in dental radiography in Iowa. SB remained employed by the Respondent at least through early June 2001, but was never certified to take dental radiographs. (Testimony of Phil McCollum; Respondent; State Exhibits 4; 20)

c. On May 29, 2001, the Respondent hired LM as a dental assistant in her North Liberty office. Ms. LM was placed

on student status in dental radiography on June 8, 2001, and took the dental radiography examination three times before achieving a passing grade. Her application for qualification in dental radiography was received on January 15, 2002, more than six months after she was placed on student status, but did not include the required \$15.00 fee. After she was reminded of the fee in writing by the Board on January 2002, her application for qualification was approved. (Testimony of Phil McCollum; Respondent; State Exhibits 4; 20)

## CONCLUSIONS OF LAW

### **COUNT I**

Count I alleged that the Respondent failed to maintain a reasonably satisfactory standard of competency in the practice of dentistry, in violation of Iowa Code section 153.34(9)(2001) and 650 IAC 30.4(16). The factual basis for this count included the Respondent's alleged failure to use a rubber dam during endodontic procedures. The Board was unable to conclude, by a preponderance of the evidence, that the Respondent failed to use rubber dams during endodontic procedures. The Respondent credibly testified that she recognized the importance of isolating the tooth in an endodontic procedure and that she always used a rubber dam. The type of rubber dam typically used by the Respondent would not have been detectable on the radiographs relied upon by the Board's consultant.

The Board has serious concerns about the Respondent's failure to chart her use of a rubber dam in endodontic procedures and about several other obvious record keeping deficiencies, including Respondent's use of white-out on an entry in one patient record. However, she was not specifically charged with these record keeping deficiencies. The failure to make a treatment entry in GH's chronological patient record for the June 1, 2001 root canal was charged and also concerns the Board. However, this single charged record keeping deficiency, by itself, was insufficient to support a finding of failure to maintain a reasonable standard of competency. Therefore, Count I is DISMISSED.

### **COUNT II and COUNT III**

Count II and Count III are factually related and will be addressed together.

Count II charges the Respondent with willful or repeated violations of Board rules, in violation of Iowa Code section 153.34(4)(2001) when she failed to protect the health of patients by assigning unlicensed auxiliary staff duties which cannot be legally delegated to them, in violation of 650 IAC 27.5:

**650-27.5(153) Use of personnel.** Dentists shall protect the health of their patients by assigning to qualified personnel only those duties that can be legally delegated. Dentists shall supervise the work of all personnel working under their direction and control.

Count III charges the Respondent with willful or repeated violations of Board rules, in violation of Iowa Code section 153.34(4)(2001) by allowing dental assistants to engage in dental radiography without meeting the requirements of 650 IAC 22.3 and 22.4:

**650-22.3(153) Training requirements.** No person shall operate radiation-emitting equipment for purposes of dental radiography without having first successfully completed an approved program or course of study which includes the following:

**22.3(1)** Theoretical considerations underlying radiation hygiene and radiological practices including radiation protection of patients and workers, monitoring, shielding, units of measurement and permissible levels, biological effects of radiation, and technical considerations in reducing radiation exposure and frequency of retakes.

**22.3(2)** Expose, process, evaluate for quality, mount, and file radiographic projections usually involved in dental radiography.

**22.3(3)** Clinical experience sufficient to demonstrate proficiency.

**650-22.4(153) Exemptions.**

**22.4(1)** An applicant for qualification in dental radiography shall be deemed eligible for examination upon compliance with provisions of subrules 22.3(1) to 22.3(3).

**22.4(2)** Students enrolled in an approved accredited dental assistant program who, as part of their course of study, apply ionizing radiation.



**22.4(3)** Dental students under student status enrolled in a board-approved dental radiography home/office study program who, as part of their home/office study, apply ionizing radiation to a human being while under the direct supervision of a licensed dentist, in a dental office, provided the course of study is completed in not more than six months from its inception. Prior to engaging in home/office study, the dental assistant must make application for student status to the board on the form approved by the board.

**22.4(4)** Students enrolled in a board-accredited school of dentistry or dental hygiene.

The factual allegations underlying Count II included allowing a dental assistant to remove a working file from a canal during an endodontic procedure on patient MB. As discussed in the Findings of Fact, the Board was unable to determine, by a preponderance of the evidence, that the dental assistant removed the working file from patient MB. For this reason, no finding of violation will be made with respect to the working file.

The preponderance of the evidence established that the Respondent allowed dental assistants to repeatedly take dental radiographs, even though they had not met the specific training requirements of 650 IAC 22.3 and 22.4. SB was employed by the Respondent from July 2000 until early June 2001, and the Respondent assigned her to take radiographs, even though SB had not completed the training requirement of 650 IAC 22.3 and did not apply for student status.

ET was hired on June 12, 2000, and the Respondent assigned her to take radiographs, even though dental assistant ET had not completed the training requirement of 650 IAC 22.3 and 22.4 and did not apply for student status until June 2001. In addition, her application for qualification in dental radiography was not approved until January 15, 2002, which was more than six months after she was granted student status. See 650 IAC 22.4(3).

The Respondent has violated Iowa Code section 153.34(4)(2001) by repeatedly violating 650 IAC 27.5 (Count II- failing to protect the health of patients by assigning unlicensed auxiliary staff duties which cannot be legally delegated to them) and 650 IAC 22.3 and 22.4 (Count III- allowing unqualified dental assistants to engage in dental radiography). The published rules requiring qualification in dental radiography have been in effect for more

than a decade. The Respondent, who graduated from dental school in 1992, was responsible for ensuring that she was familiar with the Board's rules and complied with them.

ORDER

IT IS THEREFORE ORDERED that dental license no. 7569, issued to Mahnaz Badihian, D.D.S., shall immediately be placed on probation for a period of two (2) years, effective with the date of this Order, and subject to the following terms and conditions:


1. The Respondent shall complete a course in dental ethics, prior approved by the Board, within sixty (60) days of the date of the Board's decision.
2. The Respondent shall successfully complete the Jurisprudence exam, within sixty (60) days of the Board's decision. The examination shall be taken at the office of the Board.
3. The Respondent shall report this action to current employees within ten days of the date of this order and to future employees within ten days of employment. Respondent shall forward documentation of such reporting to the office of the Board at the end of each month.
4. The Respondent shall file quarterly written reports with the Board, which shall include reports on the status of the qualification for radiology of all of her new and ongoing employees.
5. The Respondent shall upon reasonable notice appear before the Board at the time and place designated by the Board.
6. The Respondent shall fully cooperate with announced or random unannounced reviews or visits by the Board or agents of the Board.
7. The Respondent shall be responsible for all costs associated with compliance with this Order.
8. Respondent shall fully and promptly comply with all the pertinent Orders of the Board and the statutes and Board rules regulating the practice of dentistry in Iowa.

IT IS FURTHER ORDERED, pursuant to 650 IAC 30.2(9), that the Respondent shall remit to the Iowa Board of Dental Examiners a civil penalty of \$1,000, within thirty (30) days of the date of receipt of this decision.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 650 IAC 51.35(2) that the Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and any costs calculated by the executive director. The Respondent shall pay these costs within thirty (30) days of receipt of the billing.

Any violation of the terms of this Order is grounds for further disciplinary action upon notice and opportunity for hearing for failure to comply with an Order of the Board, in accordance with Iowa Code section 272C.3(2)(a).

Dated this *22<sup>nd</sup>* day of *May*, 2002.



LeRoy I. Strohman, D.D.S.  
Chairperson  
Iowa Board of Dental Examiners

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